IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1164 of 1985

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MULJI RAMJI THACKER SINCE DECEASED THROUGH HIS HEIRS

Versus

BANKIMCHANDRA SHIVSHANKAR ADHIKARI

Appearance:

1. Civil Revision Application No. 1164 of 1985

MR AR THAKKAR for Petitioner No. 1-1/2

MR YS MANKAD for Respondent No. 1-3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 16/09/2002

ORAL JUDGEMENT

The petitioner herein challenges the judgment and order dated 12th April, 1985 passed by the learned

District Judge, Kachchha in Regular Civil Appeal No.156/1981, under Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as 'the Rent Act').

The respondents - plaintiffs, the owners of the suit premises bearing Municipal Census No.2/4-48 situated at Bhuj, instituted Regular Civil Suit No.86/1979 in the Court of Civil Judge (J.D.), Bhuj for recovery of the possession of the suit premises and the amount of arrears of rent, electricity charges, etc. It was the claim of the plaintiffs that the suit premises was leased to the defendant for a monthly rent of Rs.50=00. The defendant was liable to pay Rs.4=00 every month being the amount of electricity charges. The defendant was in arrears of rent since 1st August, 1977.

The defendant contested the suit by filing written statement (Ex.12). In the written statement, the defendant raised the dispute as regards the standard rent. According to the defendant the standard rent of the suit premises ought to be Rs.10=00 per month.

The learned trial Judge, having considered the evidence on the records and the rival contentions, held that on the date of the suit notice the defendant was in arrears of rent for six months and more; the defendant was not ready and willing to pay the rent; the defendant neglected to remit the amount of arrears of rent until the expiry of one month from the date of the receipt of the suit notice and that the defendant had not raised dispute as regards the standard rent within one month from the date of the receipt of the suit notice. Copy of the reply to the suit notice produced by the defendant was not believed by the trial Court. On the aforesaid finding recorded by the trial Court, the suit was decreed under the judgment and order dated 29th September, 1981.

Feeling aggrieved, the defendant preferred Regular Civil Appeal No.156/1981 in the Court of District Judge, Kachchha. The learned District Judge, Kachchha was, under the impugned judgment and order dated 12th April, 1985, pleased to confirm the finding recorded by the trial Court. The appeal was, therefore, dismissed. Feeling aggrieved, the defendant has preferred the present Revision Application.

At the outset both the learned advocates have stated that the suit premises has collapsed in the month of January, 2001 due to an earthquake. Pending this Revision, the defendant has passed away. His family

members have not been residing at the said place. However, in view of the amendments made to the Rent Act under the Bombay Rents, Hotel and Lodging House Rates Control (Gujarat Second Amendment) Act, 2001, it is considered necessary to decide the matter on merits.

Mr.Thakkar has submitted that the defendant had given reply (Ex.67) to the suit notice (Ex.30) on 20th September, 1978 i.e. within one month from the date of the receipt of the notice. In the said reply, it was categorically mentioned that the rent charged by the plaintiffs was excessive and that the standard rent of the suit premises was Rs.10=00. Thus, the defendant having raised the dispute as regards the standard rent, the Courts below have erred in passing decree for possession under Section 12(3)(a) of the Rent Act.

I see no substance in the contention raised by Mr.Thakkar. As recorded hereinabove, the reply (Ex.67) to the suit notice has not been believed by the Courts below i.e. there is no proof that the said reply was ever sent to the plaintiffs. Admittedly, on the date of the suit notice the defendant was in arrears of rent for six months and more. The defendant did not pay the amount of arrears of rent within one month from the date of the receipt of the suit notice. It is indisputable that the defendant did not raise dispute as regards the standard rent either by replying to the suit notice or by making an application under Section 11(3) of the Rent Act within one month from the date of the receipt of the suit notice. Hence, in my view, both the Courts below were right in passing the decree for possession of the suit premises as envisaged under Section 12(3)(a) of the Rent Act. No other contention has been raised before me.

In the result, the Revision Application is dismissed with costs. Rule is discharged. Interim stay is vacated.

(Ms. R.M. Doshit, J.)

/sakkaf